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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 JON ANTHONY CLARK
11 individually and on behalf of all
12 others similarly situated,

13 Plaintiff,

14 v.

15 FREEDOM FOREVER LLC

16 Defendant.
17

Case No.

**COMPLAINT FOR
INJUNCTION AND DAMAGES**

Class Action

JURY TRIAL DEMAND

18
19 Plaintiff Jon Anthony Clark (“Mr. Clark”), by his undersigned counsel, for
20 this class action complaint against Freedom Forever LLC (“Freedom Forever”) and
21 its present, former and future direct and indirect parent companies, subsidiaries,
22 affiliates, agents and related entities, allege as follows:
23

24
25 **I. INTRODUCTION**

26 1. Nature of Action: As the Supreme Court has explained, “Americans
27 passionately disagree about many things. But they are largely united in their
28

1 disdain for robocalls. The Federal Government receives a staggering number of
2 complaints about robocalls—3.7 million complaints in 2019 alone. The States
3 likewise field a constant barrage of complaints. For nearly 30 years, the people’s
4 representatives in Congress have been fighting back. As relevant here, the
5 Telephone Consumer Protection Act of 1991, known as the TCPA, generally
6 prohibits robocalls to cell phones and home phones.” *Barr v. Am. Ass’n of Political*
7
8 *Consultants*, 140 S. Ct. 2335, 2343 (2020).

9
10 2. This case involves a campaign by Freedom Forever to sell solar
11 panels by placing illegal robocalls in alleged violation of the TCPA.

12
13 3. Because telemarketing campaigns generally place calls to thousands
14 or even millions of potential customers *en masse*, Plaintiff brings this action on
15 behalf of a proposed nationwide class of other persons who received illegal
16 telemarketing calls from or on behalf of Defendant.
17
18

19 II. PARTIES

20
21 4. Plaintiff is an individual.

22 5. Defendant Freedom Forever LLC is a Delaware corporation located and
23 with its headquarters in this District.
24

25 III. JURISDICTION AND VENUE

26 6. Jurisdiction. This Court has federal-question subject matter jurisdiction
27 over Plaintiff’s TCPA claims pursuant to 28 U.S.C. § 1331 because the TCPA is a
28

1 federal statute. 47 U.S.C. § 227; *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 372
2 (2012).

3
4 7. Personal Jurisdiction: This Court has general personal jurisdiction over
5 Defendant Freedom Forever because it has its principal place of business in this
6 District.

7
8 8. Venue: Venue is proper in this District pursuant to 28 U.S.C. §
9 1391(b)(1)-(2) because a substantial part of the events giving rise to Plaintiff's
10 claims—namely, the illegal telemarketing at issue—occurred from this District.
11

12 IV. FACTS

13 A. The Enactment of the TCPA and its Regulations

14
15 9. In 1991, Congress enacted the TCPA to regulate the explosive growth
16 of the telemarketing industry. In so doing, Congress recognized that
17 “[u]nrestricted telemarketing . . . can be an intrusive invasion of privacy [.]”
18 Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991)
19 (codified at 47 U.S.C. § 227).
20

21
22 10. The TCPA makes it unlawful to make any call (other than a call made
23 for emergency purposes or made with the prior express consent of the called party)
24 using an automatic telephone dialing system or an artificial or prerecorded voice to
25 any telephone number assigned to a cellular telephone service or that is charged
26 per the call. *See* 47 U.S.C. § 227(b)(1)(A)(iii).
27
28

1 11. The TCPA provides a private cause of action to persons who receive
2 calls in violation of 47 U.S.C. § 227(b)(1)(A) or 47 U.S.C. § 227(b)(1)(B). *See* 47
3 U.S.C. § 227(b)(3).

4
5 12. According to findings by the Federal Communication Commission
6 (“FCC”), the agency Congress vested with authority to issue regulations
7
8 implementing the TCPA, such calls are prohibited because, as Congress found,
9 automated or prerecorded telephone calls are a greater nuisance and invasion of
10 privacy than live solicitation calls, and such calls can be costly and inconvenient.
11

12 13. In 2013, the FCC required prior express written consent for all
13 autodialed or prerecorded telemarketing calls (“robocalls”) to wireless numbers
14 and residential lines. Specifically, it ordered that:
15

16 [A] consumer’s written consent to receive telemarketing robocalls must
17 be signed and be sufficient to show that the consumer: (1) received
18 “clear and conspicuous disclosure” of the consequences of providing
19 the requested consent, i.e., that the consumer will receive future calls
20 that deliver prerecorded messages by or on behalf of a specific seller;
21 and (2) having received this information, agrees unambiguously to
22 receive such calls at a telephone number the consumer designates.[.] In
23 addition, the written agreement must be obtained “without requiring,
directly or indirectly, that the agreement be executed as a condition of
purchasing any good or service.[.]”

24 *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of*
25 *1991*, 27 F.C.C. Rcd. 1830, 1844 (2012) (footnotes omitted).
26
27
28

B. Defendant's Unsolicited Pre-Recorded Telemarketing to Plaintiff

14. Plaintiff is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153(39).

15. Plaintiff's cellular telephone number is (386) XXX-XXXX.

16. Mr. Clark never provided his prior express written consent to receive calls from Defendant Freedom Forever.

17. Despite this, Defendant Freedom Forever, as part of its own telemarketing campaign, sent Plaintiff a prerecorded call on June 6, 2024, from the Caller ID 571-496-7202.

18. This message was voiced in the same pre-recorded voice by a professional voice actor and asked the Plaintiff generic questions, such as if he was a homeowner and was interested in speaking with someone about solar panels.

19. The robot did not otherwise identify itself.

20. The Plaintiff interacted with the recorded message to identify the caller calling him illegally with an anonymous pre-recorded message by interacting with the robot.

21. During that call and by interacting with the robot, the robot transferred the Plaintiff to "Val," a human being who identified herself as an agent of Defendant Freedom Forever Solar and scheduled an appointment with Defendant Freedom Forever Solar.

1 22. Thereafter, the Plaintiff received a call on that same day, and a text
2 message, from an individual named “Vincent,” with Defendant Freedom Forever
3 Solar.
4

5 23. That same day, the Plaintiff also received a follow up call from “Val,”
6 the same human being he had previously spoken with, from the caller ID 949-332-
7 4886 to clarify matters and confirm that both herself and “Vincent” worked for
8 Freedom Forever Solar.
9

10 24. Plaintiff’s privacy has been violated by the above-described
11 telemarketing call.
12

13 25. Plaintiff never provided his consent or requested the call.
14

15 26. The calls were all unwanted, nonconsensual encounters.
16

17 27. Plaintiff and all members of the Class, defined below, have been
18 harmed by the acts of Defendant because their privacy has been violated and they
19 were annoyed and harassed. In addition, the calls occupied their telephone lines,
20 storage space, and bandwidth, rendering them unavailable for legitimate
21 communication, including while driving, working, and performing other critical
22 tasks.
23

24 **V. CLASS ACTION ALLEGATIONS**

25 28. Class Definition. Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3),
26 Plaintiff bring this case on behalf of the Class (the “Class”) defined as follows:
27
28

Robocall Class: All persons within the United States: (1) to whose cellular telephone number (2) Freedom Forever (or an agent acting on behalf of Freedom Forever) placed a call (3) within the four years prior to the filing of the Complaint (4) using a pre-recorded message.

29. Excluded from the Class are counsel, Defendant, any entities in which Defendant has a controlling interest, Defendant's agents and employees, any judge to whom this action is assigned, and any member of such judge's staff and immediate family.

30. The Class, as defined above, is identifiable through telephone records and telephone number databases.

31. The potential members of the Class likely number at least in the hundreds because of the *en masse* nature of telemarketing calls.

32. Individual joinder of these persons is impracticable.

33. Additionally, the disposition of the claims in a class action will provide substantial benefit to the parties and the Court in avoiding a multiplicity of identical suits.

34. Plaintiff is a member of the Class and will fairly and adequately represent and protect the interests of the Class as he has no interests that conflict with any of the class members.

35. Plaintiff and all members of the Class have been harmed by the acts of Defendant, including, but not limited to, the invasion of their privacy, annoyance,

1 waste of time, and the intrusion on their telephone that occupied it from receiving
2 legitimate communications.

3 36. This class action complaint seeks injunctive relief and money
4 damages.
5

6 37. There are numerous questions of law and fact common to Plaintiff and
7 members of the Class. These common questions of law and fact include, but are
8 not limited to, the following:
9

10 a. whether Defendant systematically made pre-recorded
11 telemarketing calls;
12

13 b. whether Defendant made calls to Plaintiff and members of the
14 Class without first obtaining prior express written consent to make the calls; and
15

16 c. whether members of the Class are entitled to treble damages
17 based on the willfulness of Defendant's conduct.
18

19 38. Plaintiff's claims are typical of the claims of the Class.

20 39. Plaintiff's claims, like the claims of Class, arise out of the same
21 common course of conduct by Defendant and are based on the same legal and
22 remedial theories.
23

24 40. Common questions of law and fact predominate over questions
25 affecting only individual class members, and a class action is the superior method
26 for fair and efficient adjudication of the controversy. The only individual question
27
28

1 concerns identification of class members, which will be ascertainable from records
2 maintained by Defendant and/or its agents.

3 41. A class action is the superior method for the fair and efficient
4 adjudication of this controversy. Class-wide relief is essential to compel Defendant
5 to comply with the TCPA. The interests of individual members of the Class in
6 individually controlling the prosecution of separate claims against Defendant are
7 small because the damages in an individual action for violation of the TCPA are
8 small. Management of these claims is likely to present significantly more
9 difficulties than are presented in many class claims. Class treatment is superior to
10 multiple individual suits or piecemeal litigation because it conserves judicial
11 resources, promotes consistency and efficiency of adjudication, provides a forum
12 for small claimants, and deters illegal activities. There will be no significant
13 difficulty in the management of this case as a class action.

14 42. Defendant has acted on grounds generally applicable to the Class,
15 thereby making final injunctive relief and corresponding declaratory relief with
16 respect to the Class appropriate on a class-wide basis. Moreover, on information
17 and belief, Plaintiff alleges that the telephone solicitation calls made by Defendant
18 and/or its affiliates, agents, and/or other persons or entities acting on Defendant's
19 behalf that are complained of herein are substantially likely to continue in the
20 future if an injunction is not entered.

FIRST CAUSE OF ACTION
Telephone Consumer Protection Act
Violations of 47 U.S.C. § 227(b)(1)(A)(iii)
(On Behalf of Plaintiff and the Pre-Recorded Call Class)

43. Plaintiff repeats the prior allegations of this Complaint and incorporates them by reference herein.

44. The foregoing acts and omissions of the Defendant, and/or its affiliates, agents, and/or other persons or entities acting on Defendant's behalf constitute numerous and multiple violations of the TCPA, 47 U.S.C. § 227, by making calls, except for emergency purposes, to the cellular telephone numbers of Plaintiff and members of the Class delivering pre-recorded messages.

45. As a result of Defendant's and/or its affiliates, agents, and/or other persons or entities acting on Defendant's behalf's violations of the TCPA, 47 U.S.C. § 227, Plaintiff and members of the Class presumptively are entitled to an award of \$500 in damages for each and every call made to their residential or cellular telephone numbers using an artificial or prerecorded voice in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

46. If the Defendant's conduct is found to be knowing or willful, the Plaintiff and members of the Class are entitled to an award of up to treble damages.

47. Plaintiff and members of the Class are also entitled to and do seek injunctive relief prohibiting Defendant and/or its affiliates, agents, and/or other

1 persons or entities acting on Defendant's behalf from violating the TCPA, 47
2 U.S.C. § 227, by making calls, except for emergency purposes, to any cellular
3 telephone numbers using an artificial or prerecorded voice in the future.
4

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for
7 the following relief:
8

- 9 A. Certification of the proposed Class;
10
11 B. Appointment of Plaintiff as representative of the Class;
12
13 C. Appointment of the undersigned counsel as counsel for the Class;
14
15 D. A declaration that Defendant and/or its affiliates, agents, and/or other
16 related entities' actions complained of herein violated the TCPA;
17
18 E. An order enjoining Defendant and/or its affiliates, agents, and/or other
19 persons or entities acting on Defendant's behalf from making calls, except for
20 emergency purposes, to any cellular telephone numbers using an artificial or
21 prerecorded voice in the future;
22
23 F. An award to Plaintiff and the Class of damages, as allowed by law;
24 and
25 G. Orders granting such other and further relief as the Court deems
26 necessary, just, and proper.
27
28

VI. DEMAND FOR JURY

Plaintiff demand a trial by jury for all issues so triable.

VII. SIGNATURE ATTESTATION

The CM/ECF user filing this paper attests that concurrence in its filing has been obtained from each of its other signatories.

RESPECTFULLY SUBMITTED AND DATED this 6th day of September, 2024.

/s/ Dana J. Oliver

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